



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/753,171 12/29/00 SANCHEZ

1132 v CAS1PAU24R2

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IM52/1003

EXAMINER

CORBIN, A

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/753,171

Applicant(s)

SANCHEZ ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12-29-00, 5-7-01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 38-57 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 38-57 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

1. Both of applicant's Preliminary Amendments (December 29, 2000 and May 7, 2001) have been entered. ✓

2. The disclosure is objected to because of the following informalities: In the replacement paragraph beginning at column 5, line 49:

penultimate sentence, "first" should be canceled by bracketing, and last sentence, "That" should be changed to "The" and "18" (first occurrence) should be canceled by bracketing. In the replacement paragraph beginning at column 6, line 9, "the horizontal ... Conveyor 24" should be canceled by bracketing.

Appropriate correction is required.

3. Claims 38, 42, 45, 49, 52 and 55 are objected to because of the following informalities:

Appropriate correction is required. In claims 38, 45 and 52, line 3, the end bracket after ^{no} "defining" should be removed. In claims 42, 49 and 55, line 2, the comma after "horizontally" should be canceled and instead placed after "aligned".

4. Applicant is reminded that any further amendments submitted in this application must be fully supported by the original patent disclosure. Applicant must provide explanation of such support.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 38-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 38-57 are indefinite in reciting "walls" without also describing where the wall are located in the masa hopper or what type of walls are intended. There is no antecedent basis in claims 38, 45 or 52 for "said rotating" (claims 41, 48 and 54, respectively). There is no antecedent basis in claims 42, 49 or 55 for "the movement" (claims 44, 51 and 57, respectively), which can be corrected by canceling "the". Corrections are required without new matter.

7. The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CAR 1.175(a)(1) and MPEP § 1414.

The error identified in the reissue declaration applies only to the parent reissue. A different error that applicant relies upon to support the instant continuation reissue, application must be identified in a supplemental reissue declaration.

8. Claims 38-57 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CAR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

9. Claims 38-57 are rejected under 35 U.S.C. 251 as lacking basis for reissue. By statute a reissue application can only be granted for the unexpired portion of the term of the original

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patent. Since the original patent 5,635,235 has expired due to nonpayment of maintenance fees, no reissue can be issued. A petition for retroactive payment of maintenance fees or to restore the patent term may be filed.

10. Claims 38-57 are rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period. The following claim limitations are broader in scope than the original patent claims: "walls" (claims 38, 45 and 52, line 3) since original patent claim 15 recites "side walls"; "a projection" (claims 38, 45 and 52, line 4) since original patent claim 15 recites "projections"; "the projection" (claims 38 and 45, line 8 and claim 52, lines 10-11). Additionally, the above from claim 38 of the steps of rotating the shaft and removing gas bubbles, as recited in original patent claim 15, constitutes ^{en}broadening. Further, the absence from claim 45 of the steps of rotating the shaft and forcing the ~~was~~ through the slot, as recited in original patent claim 15, constitutes ^{en}broadening. Finally, the absence from claim 52 of the step of rotating the shaft, as recited in original patent claim 15, constitutes ^{en}broadening.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday--Friday from 9:30 a.m. to 7:00 p.m. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh

September 19, 2001

ARTHUR L. CORBIN
PRIMARY EXAMINER

9-21-01